

PRO SE HANDBOOK



**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA**

Last Revised February 2008

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I. WELCOME

Welcome to the United States District Court for the Western District of Virginia. We have prepared this handbook specifically for the **pro se litigant**. A **pro se** litigant is someone who has chosen, for whatever reason, to represent himself/herself as a party to a lawsuit. The purpose of this handbook is to provide the **pro se** litigant with a practical and informative **initial resource** that will assist in the decision-making process and in the filing of a **CIVIL** lawsuit when choosing not to retain the aid of a licensed attorney. You should never rely entirely on this handbook, and it should not be your only resource. Rather, this handbook should be considered a procedural aid or a starting point to help you should you choose to file a lawsuit and represent yourself. This handbook is **NOT** intended for people who want to defend themselves in a **CRIMINAL** case without a lawyer.

Representing yourself means that you are responsible for following the law. You should ALWAYS review the law before taking any action in your lawsuit. If you have questions or need to know more about the law, it is up to you to research the answers yourself. While employees of the court can answer certain questions about court procedures, they cannot give legal advice. For example, they cannot help you decide how to carry on your lawsuit; suggest legal strategies; give you “inside information” about judges or other court personnel; provide information on what the law is; interpret the law for you; or even advise you about when documents are due. Furthermore, you may not call the judge or the judge’s staff to ask for legal advice on how to pursue your case, or to argue your position outside of the courtroom.

We hope that you find this information to be helpful. In our continuous efforts to provide better service and information to the public, we welcome any comments or suggestions for improving this guide. Please send your comments to: Clerk of Court, P.O. Box 1234, Roanoke, VA 24006.

II. ALTERNATIVES TO FILING A LAWSUIT

As you may soon find out, bringing a lawsuit takes a considerable amount of time, money, and energy. Before filing a lawsuit, you may want to consider other alternatives:

- 1. Attempt to Work Things Out:** Consider talking directly to the person/people whom you think might be responsible for causing the problem. If you approach someone respectfully and give him or her a real opportunity to talk, that person may be more likely to respond in a positive manner than if your first contact after the problem arises is to threaten that person with a lawsuit.
- 2. Consider Contacting Governmental or Private Agencies:** Consider whether there are other processes you could use, or agencies you could enlist to address your problem. Sometimes there is a governmental or private agency that can address your problem or who would lend you assistance. Examples of such agencies include the Equal Employment Opportunity Commission (or an equivalent state or local agency), the local police review board, a consumer protection agency, the local Commonwealth Attorney’s Office, the Better Business Bureau, and private professional associations (e.g., associations of contractors, accountants, securities dealers, architects, and engineers, etc.) that hear business related complaints.

There are also organizations throughout the state of Virginia that provide free legal services, including litigation services, to low-income residents. To find a legal aid office near you, visit <http://www.valegalaid.org/VA/index.cfm>, or you can call Virginia’s Legal Aid Hotline at 1-866-LEGLAID (1-866-534-5243) to reach both Blue Ridge Legal Services and the Legal Aid Society of the Roanoke Valley.

Also, the Virginia State Bar runs a lawyer referral service that can put you in contact with a local attorney that has indicated an interest in handling your kind of problem. If you decide to make an appointment with the attorney that you have been referred to, you will be entitled to meet with that attorney for up to one half hour for a reasonable fee. The contact information for the Virginia State Bar Lawyer Referral Service is as follows:

Telephone Number: (804) 775-0808

Nationwide Toll Free Number: (800) 552-7977

Hours of Operation: Monday through Friday,
9 a.m. to 5 p.m. Closed on state holidays.

3. Start in a Small Claims Court: In some cases, you may have the option of filing a case in small claims court, which is designed to be used directly by people without formal training in the law. These courts are part of the Virginia state (not federal) court system.

Visit: http://www.courts.state.va.us/pamphlets/small_claims.html for information.

4. Try Mediation: Dispute resolution services, such as mediation or arbitration, may be faster and less expensive than taking a case to court. Mediation encourages parties to communicate clearly and constructively to find common ground or to identify solutions that can serve the parties' real interests.

- The Conflict Resolution Center:
<http://www.conflictresolutioncenter.us/>
- Virginia Association for Community Conflict Resolution:
<http://www.courts.state.va.us/cmcl/cmcl.htm>

III. SEVEN QUESTIONS TO CONSIDER BEFORE FILING A LAWSUIT

If you have decided that none of the above alternatives will be sufficient to address your problems, there are still issues that you should consider before filing a lawsuit. There are seven important questions you should consider **BEFORE** you file a case in this federal court. **If you cannot answer “yes” to each one of the questions listed below, it is unlikely that you will be able to prevail in your lawsuit in this court. If you can answer “yes” to all of the questions except #2 and/or #3, you should consider filing your suit in another court.**

Please note that this is a threshold list for filing a lawsuit and is not intended to suggest what the outcome may be. However, these seven questions are essential considerations before filing a lawsuit in federal court. You should also be aware that even if you answer “yes” to all seven of these questions, and you believe you should prevail in your lawsuit, that does not mean that you will ultimately prevail as winning and losing are decided by the judge and/or jury.

The following are the seven questions that you should ask yourself before filing a lawsuit in this federal court:

- 1. Valid Claim:** Have I suffered a real injury or wrong?
- 2. Jurisdiction:** Is federal district court (as opposed to Virginia state court) the appropriate place to file my lawsuit?
- 3. Venue:** Is the Western District of Virginia the appropriate federal court in which to file my lawsuit?

4. **Statute of Limitations:** Will my claim be timely if I file it now?
5. **Exhaustion:** Have I pursued all other available remedies prior to filing my lawsuit?
6. **Defendants:** Am I able to determine, identify, and locate the proper defendants for my action?
7. **Supporting Facts:** Will I be able to establish sufficient facts to support my claims?

1. **VALID CLAIM: Have I suffered a real injury or wrong?**

In order to maintain a lawsuit against someone, the person you are suing must have caused you to be harmed in some real, concrete way. Furthermore, you must be asserting your own personal legal interests. Typically a person may not sue to assert the rights of someone else. In other words, a litigant normally must assert that he or she has suffered the injury, or that a distinct group of which he or she is a part has suffered the injury. Moreover, the plaintiff must have actually suffered the harm already, or the plaintiff must be about to suffer the harm “imminently,” meaning the plaintiff will actually suffer the harm in the immediate future without court intervention.

Cases brought by persons without counsel typically fall into two categories: **civil rights violations** and **tort claims**. A civil rights case involves a claim seeking redress for the violation of a person’s constitutional rights. This type of claim is often brought under the federal statute, 42 U.S.C. § 1983. Under this law, a person who acts under color of state law to violate another’s constitutional rights may be liable for damages. A tort is defined as a “private or civil wrong or injury.” Torts may be intentional acts or negligent acts which cause you harm. A tort is distinguished from criminal law because it is an injury against an individual and not the government. For example, if a person runs a stoplight and hits your car, the state could ticket the driver for running the stoplight, but it will not sue the driver for the injuries that you received. That is considered a private wrong or injury, and it is the right of the victim to file a civil suit against the driver seeking damages for the injuries received.

2. **JURISDICTION: Is a federal court (as opposed to a Virginia state court) the appropriate place to file my lawsuit?**

In general, a court must have the power to decide a particular case; this is called **jurisdiction**. There are two court systems in the United States; the **state** court system and the **federal** court system. In Virginia, the state courts are the courts of “general jurisdiction,” which means that they can hear and decide almost any kind of legal controversy between two or more parties. Virginia state courts typically hear cases relating to civil, criminal, domestic (divorce and child custody), probate, and property matters, in accordance with the laws of the Commonwealth of Virginia.

Federal courts, on the other hand, only have jurisdiction over certain limited types of cases and controversies. Matters typically heard by the federal courts involve violation of federal laws; admiralty and maritime matters; United States patent, trademark, and copyright matters; bankruptcy proceedings; and proceedings against ambassadors, consuls, and ministers. A federal court has jurisdiction when the **United States is a defendant** in the action. Additionally, federal court jurisdiction may be based on either a **federal question** or **diversity of citizenship**.

A federal question is one that alleges that a federal law (either a federal statute or a provision of the United States Constitution) has been violated. Examples of claims that fall under the court’s federal question jurisdiction are civil rights claims under 42 U.S.C. § 1983 and employment discrimination claims under Title VII of the Civil Rights Act of 1964.

Diversity of citizenship is when the parties reside in different states, or a state and a foreign country. Thus, if you live in Virginia, all of the defendants must be citizens of a state other than Virginia for diversity jurisdiction to be available. In order for a federal court to exercise jurisdiction over a case based on diversity of citizenship, the amount that the parties are disputing must be more than \$75,000. If there is no federal statute governing your situation, and you and any of the defendants are citizens of the same state and/or the amount in controversy is \$75,000 or less, a state court may be the proper place to bring your case.

3. VENUE: Is the Western District of Virginia the appropriate federal court in which to file my lawsuit?

If you decide that your claim may be brought in a federal court because the United States is a party, there is a federal question, or there is diversity of citizenship and the amount in controversy is more than \$75,000, you must then determine in *which* federal court to file. In order to decide a case, a court must have some logical relationship either to the litigants or to the subject matter of the dispute; this is called **venue**.

There are two United States District Courts in Virginia: the **Eastern District** and the **Western District**. Generally, you may only file an action in the Western District of Virginia if the actions or inactions that you believe violated your rights occurred within the boundaries of this District. The seven divisions of the Western District are provided below, along with their corresponding counties and cities:

Abingdon: Counties: Buchanan, Russell, Smyth, Tazewell, Washington
Cities: Bristol

Big Stone Gap: Counties: Dickenson, Lee, Scott, Wise
Cities: Norton

Charlottesville: Counties: Albemarle, Culpeper, Fluvanna, Greene, Louisa, Madison, Nelson,
Orange, Rappahannock
Cities: Charlottesville

Danville: Counties: Charlotte, Halifax, Henry, Patrick, Pittsylvania
Cities: Danville, Martinsville, South Boston

Harrisonburg: Counties: Augusta, Bath, Clarke, Frederick, Highland, Page, Rockingham, Shenandoah, Warren
 Cities: Harrisonburg, Staunton, Waynesboro, Winchester

Lynchburg: Counties: Amherst, Appomattox, Bedford, Buckingham, Campbell, Cumberland, Rockbridge
Cities: Bedford, Buena Vista, Lexington, Lynchburg

Roanoke: Counties: Alleghany, Bland, Botetourt, Carroll, Craig, Floyd, Franklin, Giles, Grayson, Montgomery, Pulaski, Roanoke, Wythe
Cities: Clifton Forge, Covington, Galax, Radford, Roanoke, Salem

4. STATUTE OF LIMITATIONS: Will my claim be timely if I file it now?

Usually a claim must be filed within a certain period of time after an injury occurs or is discovered. This rule is called the **statute of limitations**, and the length of the statute of limitations varies depending on the type of claim. Whether the statute of limitations will prevent you from prevailing on your claim is a legal question which may require you to do some legal research. You should be certain that the relevant statute of limitations has not expired before you file a lawsuit, or the court cannot consider your claims.

5. EXHAUSTION: Have I pursued all other available remedies prior to filing my lawsuit?

You should be aware that, in some instances, it is necessary for you to pursue certain remedies before you can properly pursue a claim in federal court. This is called **exhaustion**. There are five areas in particular where this is likely to arise: (1) if you are appealing a federal agency's decision; (2) if you wish to sue a current or former employer for employment discrimination; (3) if you are seeking a writ of habeas corpus in federal court; (4) if you are a prisoner and you seek to file a claim that prison conditions violate your rights; or (5) if you intend to bring suit under the Federal Tort Claims Act.

(1) Appeal of Federal Agency's Decision (Administrative Grievance Procedures): People frequently want to appeal the decision of a governmental agency that affects them. For example, a person may want to appeal the decision of the Social Security Administration to deny an application for social security benefits.

If you want to appeal the denial of a benefit that is provided through an agency of the United States government, you must pursue all of the administrative procedures established by the agency for appealing its ruling before you file a lawsuit. Only after you have pursued all available administrative remedies, and you still believe you are entitled to a benefit that you have not received, may you initiate a lawsuit.

(2) Employment Discrimination Claims: A person who believes he or she has been illegally discriminated against by an employer may bring a lawsuit against the employer under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"), or the Equal Pay Act. However, with the exception of the Equal Pay Act, before a person can bring such a lawsuit, he or she must first file a complaint with either the Equal Employment Opportunity Commission ("EEOC") or the Virginia Human Rights Council. Please contact the EEOC (www.eeoc.gov) or the Virginia Human Rights Council (<http://chr.vipnet.org>) for further details.

(3) Petition for Writ of Habeas Corpus under 28 U.S.C. §§ 2254 or 2241: A person who is incarcerated or is otherwise "in custody" pursuant to a judgment of conviction rendered in a state court order may wish to challenge the fact or duration of this confinement. Such a challenge would be brought as a petition for a writ of habeas corpus under 28 U.S.C. § 2254, and it would be brought against the person who holds the inmate in custody, i.e., the prison's superintendent. If the person can successfully prove that a constitutional right was violated, and that if that right had not been violated, the person would not have been incarcerated at all (the "fact of incarceration") or the duration of the incarceration would have been shorter, the court may grant a writ of habeas corpus.

However, before a petition under 28 U.S.C. § 2254 can be properly filed in the federal court, the petitioner must pursue and exhaust all available state law remedies. This means that if you want to challenge a conviction or a sentence, you must pursue your rights of appeal and state habeas under Virginia law, in Virginia state courts. See <http://www.courts.state.va.us/courts/courts.html>.

You should also realize that there are time limits as short as one year that apply to petitioners seeking a writ of habeas corpus. For the rules governing time limits on filing a § 2254 habeas petition, please see 28 U.S.C. § 2244(d).

Also, a petitioner must exhaust all administrative remedies before filing a habeas action pursuant to 28 U.S.C. § 2241. Prisoners may file federal post-conviction habeas corpus petitions under 28 U.S.C. § 2241 in two circumstances: 1) where the prisoner does not challenge the validity of his conviction and sentence, but rather its execution (for example, claims that the Bureau of Prisons miscalculated a sentence or failed to properly award good time credits, or complaints about parole proceedings are properly raised in these types of habeas corpus petitions), and 2) in exceptional cases where the prisoner can show that his remedy under Section 2255 is “inadequate or ineffective” to challenge the validity of his federal criminal conviction or sentence. Section 2241 also provides for a more general form of habeas corpus relief and would apply, in extremely limited circumstances, to an inmate “in custody” in state or local jails who has not yet had a state criminal judgment or sentence entered against him (i.e., a pretrial detainee).

(4) Prisoner Challenges to Prison Conditions Under 42 U.S.C. § 1983 and Bivens: The Prisoner Litigation Reform Act (“PLRA”) was passed by Congress in 1995. The PLRA requires that prisoners fully and properly pursue all available administrative remedies before they file a lawsuit to challenge the conditions of their confinement or allege other civil rights violations. This means that, if you are a prisoner, you must first utilize your facility’s grievance procedures in an attempt to resolve your problem. Generally, you may only file a lawsuit about prison conditions if you have already properly pursued your grievance through each level of the administrative grievance process, including appeals.

A section 1983 action is brought against state officials for violations of constitutional rights. If a prisoner wishes to bring an action for a violation of constitutional rights by a federal official or officials, he or she would instead file what is called a Bivens action. See Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971). A Bivens action, though not precisely parallel, is much like a section 1983 action, and a prisoner must also fully and properly exhaust prison administrative remedies before bringing a Bivens action.

(5) Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671-2680: Under the FTCA, an individual may sue the United States for loss of property resulting from the tortious or negligent conduct of one of its employees, only if that individual exhausts administrative remedies prior to filing suit in federal court. See 28 U.S.C. §§ 2679(b), 2675(a). For example, a prisoner pursuing FTCA claims must prove that he has exhausted administrative remedies by submitting to the Bureau of Prisons an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident and has received a notice of final agency action on his claim. See 28 U.S.C. § 2675; 28 C.F.R. §14.2.

6. DEFENDANTS: Am I able to determine and name the proper defendants for my action?

When determining whom you should name as a defendant in your lawsuit, there are several factors you should consider. First, you generally must show that each person or entity you are suing engaged in wrongful conduct that caused you harm. Thus, you should name a defendant only if you are able to describe his or her actions or inactions that you believe were wrongful and how you believe those actions harmed you.

Second, you must list individuals by their names whenever possible. Avoid suing groups of people such as “the personnel department” or “the medical staff.” Also, you should know that you cannot pursue a lawsuit against “John Doe” or “Jane Doe” defendants. If one of your defendants cannot be identified and **served**, you will not be able to prevail in your lawsuit against that person (service of process will be explained more fully in the next section). It is your responsibility, and not the duty of the court, to ascertain the identities and addresses of those individuals whom you believe caused you to be injured.

Third, you should be aware that some people cannot be held liable for actions they take while performing the duties of their jobs. This is called immunity. For example, when a judge decides a case, he or she is immune from lawsuits or actions taken in the process of deciding that case. Similarly, prosecutors are immune from liability for actions they take in prosecuting or failing to prosecute individuals.

There may also be other legal defenses that a person can assert which will protect him or her from liability.

7. SUPPORTING FACTS: Will I be able to establish sufficient facts to support my claims?

In a civil lawsuit, the burden is on the plaintiff to prove by a preponderance of the evidence that the defendant(s) violated the plaintiff’s rights. Therefore, in order to win a case, a plaintiff must be able to present facts that support his or her claims. Asserting the mere conclusion that the defendant(s) caused you harm or violated your rights will be insufficient.

Before you begin a lawsuit, be sure that you can allege enough facts to support your claim that the defendant(s) violated your rights. Such facts should include who each defendant is, specifically what he or she did or did not do that you believe was wrongful, when the incident took place, and where the incident happened. You should also be able to identify how each defendant’s actions or inactions caused you harm.

In order to prove your case, you must be able to provide evidence that supports the facts you allege. In addition, you need to be able to identify any witnesses whom you believe observed the incident. You may also be called upon to present physical evidence such as photographs, letters, emails, police reports, medical records, or other proof.

In conclusion, it is important that you consider all of these questions before you file a case. After all of these factors have been considered, you must still follow the procedures set out by the particular court with which you decide to file your case. If your case needs to be filed in a court other than the United States District Court for the Western District of Virginia, you should contact the Clerk’s Office of that court for information regarding local rules and procedures for filing your case.

IV. BRINGING YOUR LAWSUIT

If after reading the above, you still wish to bring a lawsuit, the following is provided to guide you in the various initial steps that you will need to take. Please note that some of the service and scheduling rules do not apply or are applied differently if you are an inmate.

1. Write Your Complaint

All cases are comprised of documents prepared and filed by litigants. The most common documents are the complaint, answer, and motions. The first document that you must write/file is called a

COMPLAINT. The function of the complaint is to tell the court and defendant(s) your reason(s) for filing the lawsuit and what relief you desire. The complaint is made up of four main parts:

(1) The **NAME** and **ADDRESS** of the plaintiff and the defendant(s). These are usually listed in the first and second paragraphs respectively. If there is more than one defendant, list each defendant's name and address in separate additional paragraphs.

(2) The **JURISDICTION** or reason your case is being filed in this federal court. See 28 U.S.C. § 1331 et seq.

(3) The **ALLEGATIONS** or claims that you are making against the defendant(s). Place each allegation in a short, clearly-written paragraph. See Rules 8 and 10 of the Federal Rules of Civil Procedure.

(4) The **RELIEF** you are seeking from the court. This can be money or something you want the judge to make the defendant do or stop doing. This information is usually written in the last paragraph of the complaint.

The complaint must also state the complete **CAPTION** of the case listing all of the parties. Each party must be named in the caption. An example of the correct heading for a complaint to be filed in this district is:

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
_____ DIVISION**

(NAME),)	
Plaintiff,)	Civil Action No. (assigned by clerk)
)	
v.)	
)	
(NAME))	
Defendant(s).)	

COMPLAINT

Please also be sure to number each paragraph except for the paragraph that asks the court for relief. If you believe that you are entitled to have your case decided by jury, you must indicate in a paragraph following the relief requested that you demand a trial by jury. See Rule 38 (b) of the Federal Rules of Civil Procedure.

Do not worry that your complaint is not professionally written. A complaint does not need to be typewritten, but must be legible if handwritten. All written pleadings submitted to this court must be on 8 ½ x 11 paper with reasonable margins and spacing. Please use only one side of the paper. The court will take into consideration that you are a pro se litigant and untrained in drafting legal documents. You should, however, make every effort to state your case in clear, concise terms. See Rules 8 and 10 of the Federal Rules of Civil Procedure.

Please be aware that there are forms that you must complete if you wish to file a petition under Title 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody; if you wish to file a motion under Title 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody; or if you wish to file a 42 U.S.C. § 1983 or Bivens action. These forms are available in the Clerk's Office or on the court's website at <http://www.vawd.uscourts.gov/forms/default.asp>.

2. File Your Complaint

Your next step is to file the **COMPLAINT** with the court. The following forms will have to be completed and submitted with the **COMPLAINT**:

a. A **CIVIL COVER SHEET**.

b. If you are making service by **SUMMONS**, a completed **SUMMONS** for each defendant. (Please refer to Step 3 for service).

c. A \$350.00 **FILING FEE** (The filing fee for a petition for writ of habeas corpus is \$5.00).

All checks or money orders should be made payable to: “CLERK OF THE COURT.” IF YOU CANNOT AFFORD TO PAY THE FILING FEE, you may be allowed to have the filing fee waived if you fill out an **APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** and send it to the court with the **COMPLAINT, CIVIL COVER SHEET, SUMMONS** (if applicable), and service copies for each defendant. A **FINANCIAL AFFIDAVIT** is required to be completed so that the judge can make a determination of your inability to pay the filing fee. Each of these documents will be reviewed and forwarded to a judge for his or her consideration. If your application is approved, the filing fee will be waived in most cases and your case will proceed. If your application is not approved, you must pay the filing fee to have your case proceed.

3. Provide Service of Process

Your next step is to **SERVE** (inform) each of the defendants that he or she is being sued. This may be done in two ways:

a. NOTICE & REQUEST FOR WAIVER OF SERVICE

You may notify non-government defendant(s) of the commencement of the lawsuit by sending a “**NOTICE OF LAWSUIT AND A REQUEST FOR WAIVER OF SERVICE OF SUMMONS**” (Form AO 398), along with a copy of the **COMPLAINT** by first-class mail or other reliable means. You must also include a copy of the **WAIVER OF SERVICE OF SUMMONS** (Form AO 399), and a self-addressed return envelope. See Rule 4(d) of the Federal Rules of Civil Procedure. If service is waived by the defendant, the **WAIVER OF SERVICE** form is returned to you for filing with the court and the action shall proceed. If the defendant does not waive service, you must proceed with service of process.

If you are suing the United States (and its agencies, corporations, or officers) or a state, local, or foreign government, you CANNOT use this method and YOU must arrange for **SERVICE OF PROCESS** (which is described below).

b. SERVICE OF PROCESS

Making **SERVICE OF PROCESS** involves serving a copy of the original **COMPLAINT** and **SUMMONS** to each defendant.

A **SUMMONS** is a document used to notify the person named as the defendant of the commencement of your lawsuit and the requirement to appear and answer. The summons must contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the

plaintiff's attorney, if any, otherwise the plaintiff's address and the time within which the rules require the defendant to answer the complaint.

If a defendant has not "waived service of summons" OR you are suing a government (federal, state, local, foreign) you must arrange to have a copy of an original **SUMMONS** and a copy of the **COMPLAINT** served upon each defendant. You must complete a summons for each defendant and present each summons to the Clerk of the Court who will sign and place the court seal on each summons. The original summons should be kept by the person making the service.

You can make service of process by having a "disinterested" (non-party) person who is over the age of eighteen deliver copies of the summons and complaint to each of the defendants. When using this method of making service of process, have the server fill out the back of the original summons, and send it to the court. See Rule 4 of the Federal Rules of Civil Procedure.

For those cases in which the court has directed the United States Marshals Service to make service, a summons should not be prepared because the Marshal will effectuate service pursuant to Federal Rule of Civil Procedure 4(d)(2), unless the United States or its agencies or a state or local government are defendants. If that is the case then you must prepare a summons. In order for the Marshal to effectuate service on all defendants you must provide service copies of all relevant documents for each defendant and complete a Marshal's 285 form, available in the Clerk's Office, for each defendant. In addition, you are responsible for the timely movement of your case once it is filed. Unless otherwise ordered by the court, you are not relieved of the costs associated with service by the United States Marshals Service.

4. After Your Lawsuit Has Been Filed

The **ANSWER** is the formal written statement by the defendant(s) responding to a **COMPLAINT** setting forth any defenses and objections to the claims by the plaintiff.

A **MOTION** is an application or request made to the court for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant. See Rule 7(b) of the Federal Rules of Civil Procedure.

In most cases, the court will issue a **SCHEDULING ORDER** which sets forth a timetable with deadlines that the litigants must follow. Failure to meet the deadlines in a scheduling order may result in the dismissal of your case. See Rule 26 of the Federal Rules of Civil Procedure.

The **DISCOVERY PERIOD** is the time frame allowed by the court for both plaintiff and defendant(s) to discover facts, research the law, and gather evidence to be presented at a hearing or trial to prove the litigant's position/case. Certain motions may be considered by the court without the need for any discovery.

5. Other Important Information

Whenever you file any document with the court, you must always:

- a. Send a copy to each of the parties, or their lawyers, and indicate at the end of the document that you have done so in accordance with Federal Rule of Civil Procedure 5. This is called **PROOF OF SERVICE**.
- b. Provide the correct civil action number of your case on the document.

c. Sign all documents you file with the court. Place the words “pro se” after your name. Place your address, email, and telephone number on all documents. It is very important that you provide a telephone number in the event that it is necessary to obtain further information or clarification, or advise you of any changes in hearing schedules. If you do not provide us with a contact phone number, the court WILL NOT be responsible for untimely notification of emergency changes in hearing schedules. Furthermore, a case may be dismissed if mail to you is returned as undeliverable at the address you provided.

6. Table of Pleadings

Please note again that the forms you need to bring your lawsuit are available in the Clerk’s Office or on the court’s website at: <http://www.vawd.uscourts.gov/forms/default.asp>.

PLEADING	DESCRIPTION	TIME
Civil Cover Sheet	The document that must accompany the complaint and the summons before filing can occur.	Initial filing
Complaint	Informs the court and defendant(s) of your reason(s) for filing the lawsuit and what relief you desire.	Initial filing
Summons	A writ used to notify the person named as the defendant of the commencement of your lawsuit and the requirement to appear and answer.	Issued with the seal of the Clerk
Motions	An application or request made to the court for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant.	Filed with the Clerk before trial
Proof of Service	Whenever a document is filed with the court, there must be a proof of service certificate included, which certifies that a copy of the document was sent to and filed with the other party.	Attached to each document served and filed with the Clerk

V. WHAT HAPPENS AT A COURT HEARING?

1. What is a hearing?

A hearing is a relatively formal court proceeding where the parties discuss issues with the judge and have their arguments on the relevant issues heard by the judge. Sometimes witnesses can be presented, but that depends on the legal issues the judge is covering at the particular hearing. Before the hearing, take time to review all of the papers that have been filed that relate to the hearing. The judge will expect you to be able to answer questions about the issues that are being addressed at the hearing and about anything else that has happened in the lawsuit. Bring to court any papers that you might need to answer the judge’s questions.

2. How is the courtroom set up?

Although each courtroom is slightly different, the courtroom is generally arranged as follows:

- a. In the front of the courtroom is a large desk area where the judge sits. This is called “the bench.”

- b. In front of the judge and over to one side is a chair where witnesses sit when they testify. This is called the “witness box.”
- c. In front of the judge, there will usually be a person seated in front of a small machine. This is the court reporter. The court reporter uses the machine to create a record of everything that is said at the hearing.
- d. There will often be another person seated in front of the judge. This is the courtroom deputy, who assists the judge. If you need to show a document to the judge during a hearing, you should hand the document to the courtroom deputy, or the courtroom security officer, who will then hand it to the judge.
- e. There may be other court staff members, such as law clerks, seated off to the side.
- f. In the center of the courtroom in front of the bench is a podium with a microphone. This is where lawyers, and parties who do not have lawyers, must stand when they speak to the judge.
- g. At one side of the courtroom, against the wall, there are two rows of chairs. This is the jury box, where jurors sit during a trial. During a hearing, court staff members may be sitting in the jury box.
- h. In the center of the courtroom, there will be several long tables with a number of chairs around them. This is where the lawyers and the parties sit during a hearing and during trial. The plaintiffs sit at the table that is closest to the jury box. The defendants sit at the table next to the plaintiffs.
- i. In the back of the courtroom are several rows of benches where anyone can sit and watch the hearing or trial.

3. How do I dress, where do I sit, and what do I say?

When attending a hearing, it is customary to show respect for the court by dressing nicely and conservatively. The judge will expect you to be on time. Often the court has several short hearings scheduled for the same time. When you enter the courtroom, you should sit in the benches in the back of the courtroom until your case is announced. If your hearing is the only one scheduled, you may sit at the plaintiffs’ or defendants’ table in the center of the courtroom, instead of sitting in the benches at the back of the room. When the judge enters the courtroom, you must stand and remain standing until the judge sits down. When you hear your case announced and are invited to address the court, go immediately to the podium in front of the bench. You can bring with you any papers that you may need to refer to during the hearing. When you get to the podium, state your name, and indicate whether you are the plaintiff or the defendant. When you speak to the judge, it is customary to refer to the judge as “Your Honor” instead of using the judge’s name. Always answer the judge’s questions completely, and never interrupt the judge when he or she is speaking. When the judge is finished asking questions, he or she will usually ask if the parties have anything else they want to discuss.

4. What should I expect at a hearing?

If the judge is hearing a motion, the hearing usually goes through the following sequence of events. First, the party who filed the motion has a chance to argue why the motion should be granted. Then, the opposing party will argue why the motion should be denied. Finally, the party who filed the motion has an opportunity to explain why he or she believes the opposing party’s argument is wrong. You should try not to repeat all the arguments that you made in your motion or opposition papers, but instead simply highlight the most important parts. When one party is speaking, the other party should

sit at the table. Never interrupt the other party. Instead, always wait until it is your turn to speak. The judge may ask questions before you begin your argument, and may also ask questions throughout your argument. If the judge asks a question, always stop your argument and answer the judge's question completely. When you are finished answering the question, you can go back and finish the other points you wanted to make. If the judge asks you a question when you are seated at the table, stand and walk up to the podium before you answer the question.

VI. LEGAL RESEARCH—AN OVERVIEW

The court would like to provide the pro se litigant with some basic information on legal research. This information is not meant to be a complete or comprehensive guide to the law library or to legal research and writing.

Legal **Authority** is the information used to convince a court how to apply the law to the facts of a case. Legal authority is divided into two classes -- **primary** and **secondary**. There are two sources of primary authority: (1) constitutions, codes, statutes, and ordinances; and (2) court decisions, preferably from the same jurisdiction where the case is filed. Secondary authority, which is not cited except in certain circumstances, is found in legal encyclopedias, legal texts, treatises, law review articles, and court cases in other jurisdictions. **Primary authority** is the most accepted form of authority cited and should be used before any other authority.

Some basic rules of legal research are as follows:

1. Give priority to cases from your own jurisdiction.
2. Search for the most recent ruling on a subject matter.
3. Check the pocket part in the back of almost all law books. The pocket part is the most frequently used device for updating law books.
4. Pay attention to dates on books, i.e., the copyright date and the date of pocket parts.
5. All legal citations are written with the volume number first, an abbreviation of the title, and the page number, e.g., 152 P.2d 967 or 144 A.L.R. 422. There are certain standards for **citing** (referencing) legal **authority** in your court documents. The most common source of citation standards is A Uniform System of Citation, Eighteenth Edition, published and distributed by The Harvard Law Review Association, Cambridge, Massachusetts. It is more commonly referred to as "The Bluebook."
6. Make certain that the cases you rely on have not been over-ruled by a higher court. This may be done by checking the citations in a series of books called Shepard's. This process is called shepardizing the case.

Resources:

Roanoke Law Library
315 Church Ave SW, Suite B
Roanoke, VA 24016
(540) 853-2268

Law.Library@roanokeva.gov

Hours of Operation for Law Library: M-F 8:00AM - 4:30PM; Closed Sat. and Sun.

****LexisNexis online research is available.** There are also several books available in the library that might help guide you through your legal research. Please note that the librarians are unable to give you legal advice. Law libraries may also be available in other cities and also at law schools.

United States Code:

<http://uscode.house.gov/>

<http://www.gpoaccess.gov/uscode/index.html>

Federal Rules of Evidence: <http://www.uscourts.gov/rules/newrules4.html>

Federal Rules of Civil Procedure:

<http://judiciary.house.gov/hearings/printers/110th/civil2008.pdf>

Federal Rules of Appellate Procedure: <http://www.ca4.uscourts.gov/pdf/rules.pdf>

VII. A WORD OF CAUTION—SANCTIONS

Representing yourself in a lawsuit carries certain risks and responsibilities. If you decide to proceed pro se, you will be responsible for learning about and following all the procedures that govern the court process.

The court may penalize a party or attorney for failing to comply with a law, rule or order at any point while a lawsuit is pending. Such penalties are called sanctions, and pro se litigants are subject to the same sanctions as licensed attorneys. For example, when a party to a lawsuit presents a document to the court, that party is verifying the accuracy and reasonableness of that document. Federal Rule of Civil Procedure 11 states that if such a submission is false, improper, or frivolous, the party may be liable for monetary or other sanctions. Please consult Federal Rule of Civil Procedure 11 for further information.

VIII. FINAL THOUGHTS

Representing yourself in a civil suit can be a difficult and time-consuming ordeal. Before you make the decision to become a pro se litigant, it is strongly advisable to at least find out if you have other options. Because representing yourself in a lawsuit is difficult, the court urges you to think seriously about getting a lawyer, if at all possible.

For additional information about the federal courts, you may wish to refer to the following publications:

- *Inside the Federal Courts:* <http://www.fjc.gov/federal/courts.nsf>
- *Welcome to the Federal Courts:*
[http://www.fjc.gov/public/pdf.nsf/lookup/WelFedCt.pdf/\\$file/WelFedCt.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/WelFedCt.pdf/$file/WelFedCt.pdf)
- *Federal Courts and What They Do:*
[http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWhat.pdf/\\$file/FCtsWhat.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWhat.pdf/$file/FCtsWhat.pdf)
- *Understanding the Federal Courts:* <http://www.uscourts.gov/understand03/>

Also, the Administrative Office of the United States Courts has compiled a glossary of common legal terms that might be helpful to you during this process. It can be accessed at: http://www.uscourts.gov/understand03/content_9_0.html.